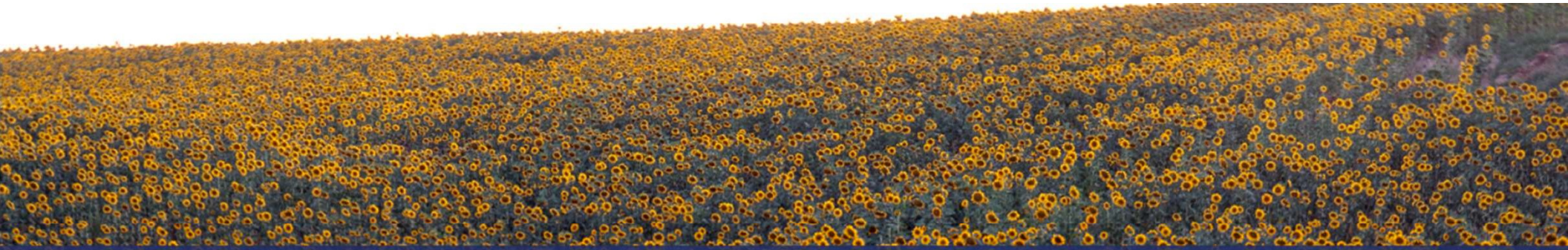


Appeals Board Roundtable

John Carpinelli, Rebecca Sanders,
Chris Clements, Will Belden

Kansas
Department of Labor

Which way is up?

It has been said a Board decision may be found which could support nearly any workers compensation argument. We need clear direction from the appellate courts, especially because Kansas workers compensation is in a state of flux. We await the *Johnson v. U.S. Foods* decision regarding the constitutionality of the use of the AMA *Guides*, 6th ed., for impairment ratings. Some litigation is suspended until a decision is reached. Beyond hesitancy in litigation based on a constitutional challenge, the appellate courts may inject more confusion than clarity in every day workers compensation proceedings.

K.A.R. 51-3-5a(a), “Procedure for preliminary hearings,” provides:

Medical reports or any other records or statements shall be considered by the administrative law judge at the preliminary hearing. However, the reports shall not be considered as evidence when the administrative law judge makes a final award in the case, unless all parties stipulate to the reports, records, or statements or unless the report, record, or statement is later supported by the testimony of the physician, surgeon, or other person making the report, record, or statement. If medical reports are not available or have not been produced before the preliminary hearing, either party shall be entitled to an ex parte order for production of the reports upon motion to the administrative law judge.

K.A.R. 51-3-5a(a) could be read literally to apply to medical reports "or any other records or statements." In *Woessner v. Labor Max Staffing*, No. 119,087, 2020 WL 5083418 (Kan. Aug. 28, 2020), our Supreme Court interpreted K.A.R. 51-3-5a as applying to medical reports or records, not to any other record or statement. The Supreme Court ruled that a drug test result is not a medical report or record. Further, if a medical report is placed into evidence at a preliminary hearing, the report must later be stipulated into evidence or supported by testimony, consistent with K.S.A. 44-519. For non-medical records to be admitted into evidence, there is no need for a stipulation or supporting testimony. Rather, only sufficient indication of reliability is needed.

Three justices disagreed in *Woessner* and stated the regulation applied to more than just medical records. These three justices joined in a concern:

"Beyond my disagreement with the plurality opinion's plain language reading of the regulation, I fear that its interpretation has the unintended effect of illogically creating two distinct tiers of most evidence in workers compensation proceedings: one class of materials, which must be supported by either testimony or stipulation because it happened also to be offered at a preliminary hearing, and another that is totally unfettered by any requirements of reliability. This will only increase the uncertainty in the result of workers compensation litigation."

Id., 2020 WL 5083418, at *16.

There is also some reliance on judicially-created definitions over statutory definitions. For instance, the Kansas Court of Appeals stated: Kansas has a definition for “arising out of and in the course of employment”:

“[A]n injury arises ‘out of’ employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase ‘in the course of' employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service. [Citations omitted.]’ ” *Scott*, 294 Kan. at 416 (quoting *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 [1995]).

Courts have held that “the two phrases arising ‘out of’ and 'in the course of' employment, as used in our [Act], have separate and distinct meanings; they are conjunctive, and each condition must exist before compensation is allowable.” *Kindel*, 258 Kan. at 278. Courts have further emphasized work that has expressly been forbidden can take an employee out of the scope of employment.

Thien Tran v. Figueroa, No. 119,799, 2020 WL 1973953, at *4 (Kansas Court of Appeals unpublished opinion filed April 24, 2020).

The *Thien Tran* Court did not mention the 2011 amendments to the Act. K.S.A. 44-508 contains various conditions that help define "arising out of" and "in the course of" employment, including:

K.S.A. 44-508(f)(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

(i) The employment exposed the worker to an increased risk or hazard to which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition and resulting disability or impairment.

(3) (A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

(i) Injury that occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury that arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury that arose out of a risk personal to the worker; or

(iv) accident or injury that arose either directly or indirectly from idiopathic causes.

The parameters of what defines a statutory employer-employee relationship could vary depending on statutory language versus following judicial interpretation of K.S.A. 44-503(a), arguably inconsistent with plain meaning:

"There may be some uncertainty about the continuing viability of the interpretation of K.S.A. 44-503(a) set out in *Hanna* and *Bright*. The tests set out there seem to add language that's not found in the statute itself, and more recent Kansas Supreme Court opinions interpreting the Workers Compensation Act have emphasized that we should rely only on the statutory language. *Hoesli v. Triplett, Inc.*, 303 Kan. 358, 367-68, 361 P.3d 504 (2015); *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, 610, 214 P.3d 676 (2009); *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 525, 154 P.3d 494 (2007). Of course, we follow Kansas Supreme Court caselaw unless that court has given some indication that its precedents are no longer valid. *State v. Spencer Gifts*, 304 Kan. 755, 767, 374 P.3d 680 (2016)."

Ramirez v. Garay's Roofing, LLC, No. 119,948, 2019 WL 3367831, at *4 (Kansas Court of Appeals unpublished opinion filed July 26, 2019). The *Ramirez* case indicated the claimant proved he was a statutory employee under the statute and Kansas Supreme Court precedent.

There are also scenarios in which the Court of Appeals has Supreme Court precedent that could be followed, such as whether a voluntary payment of compensation revives the time limitations contained in K.S.A. 44-534:

"Under the facts of this case, when the employer made a payment of compensation after the two-year statute of limitations to apply for a hearing had run under K.S.A. 44-534(b), the employer revived the employee's two-year-time period in which to file a timely application for hearing. As a result, the employee timely filed an application for a hearing within two years of the employer's last payment of compensation."

Schneider v. City of Lawrence, 56 Kan. App. 2d 757, Syl. ¶ 3, 435 P.3d 1173 (2019), *rev. denied* (Sept. 9, 2019). The Court observed Supreme Court precedent in *Graham v. Pomeroy*, 143 Kan. 974, 57 P.2d 19 (1936), which did not allow revival of a claim based on voluntary payment of compensation once the time deadline has passed, actually failed to rely on any statutory language for support. The *Schneider* case relied on plain statutory language.

Travelers Cas. Ins. v. Karns, 56 Kan. App. 2d 388, 431 P.3d 301 (2018), is an odd duck.

The record is convoluted. The Kansas Court of Appeals "remanded" a case to the Board. The dispute started as a workers compensation claim brought by Tamera K. Barker against two law offices that employed her over the course of many years. The ALJ found a single date of accident. Further, the ALJ ruled that each insurance carrier was responsible to pay benefits incurred during its coverage period and any insurance carrier which paid benefits outside its coverage period should be reimbursed from the Fund. The Board initially found two dates of accident based on repetitive injuries and awarded benefits against the first employer and two insurance carriers, as well as against the second employer and Travelers. Otherwise, the Board affirmed the ALJ's Award regarding medical expenses.

The decision was reviewed by the Kansas Court of Appeals. Briefly explained, the Court of Appeals remanded the case to the Board because the Court wanted the Board to determine if Ms. Barker not only sustained two accidents, but two distinct injuries. On remand, the Board clarified there were two accidental series of injuries, but otherwise indicated the prior Board decision remained unchanged.

Thereafter, there was a dispute about which insurance carrier should have been responsible for benefits paid to Ms. Barker. OneBeacon had paid nearly $152,000 in medical benefits outside its coverage period, and such insurance carrier wanted the Director to order the Fund to reimburse it for such amount. Travelers also wanted the Fund to be responsible for the paid benefits. The Director disagreed and issued what the Court of Appeals called a "self-described order" directing Travelers to reimburse OneBeacon for the benefits paid. *Travelers*, 56 Kan. App. 2d at 304.

Travelers Cas. Ins. v. Karns, 56 Kan Con't

- Travelers appealed the Director's decision to the Shawnee County District Court as a civil case. Judge Franklin Theis ruled reimbursement from the Fund was only allowed if Ms. Barker was not entitled to any benefits at all from anyone. The Director's ruling was essentially left undisturbed. Judge Theis' ruling was reviewed by the Kansas Court of Appeals.

- On review, the Kansas Court of Appeals concluded the Director lacked authority to make findings of fact and conclusions of law regarding reimbursement. Rather, those determinations should be left to an ALJ and/or the Board. The case was remanded – not to the district court from which it originated, as might be expected – but to the Board. The Board was told to address impleading the Fund, OneBeacon's request for reimbursement, the statutory mechanism for reimbursement, and if so, the specific amount to be reimbursed. The Court indicated the Fund had to be brought into the case as a party if it might be liable for payment of benefits. Finally, the Court noted the ALJ's Award from late-2011 cited no authority to rule that an insurance carrier paying benefits outside its coverage period should be reimbursed from the Fund

On remand to the Board, the parties unanimously agreed the Board did not have jurisdiction to hear the case. The Board noted the parties' well-reasoned concerns, but noted the higher decision impliedly concluded the Board had jurisdiction, despite the civil case being brought in district court and having never been brought under the Board's administrative authority. While the Board disagreed with the method in which the case returned, it concluded it still had jurisdiction to determine the unresolved reimbursement issue. Following the higher court's instructions, the Board concluded the Fund had to be included as a party.

The Board, however, pointed out appellate decisions holding reimbursement from the Fund should occur when benefits were paid by an insurance carrier, but not owed by any party according to K.S.A. 44-534a(b). Further, K.S.A. 44-566(e) concerned reimbursement disputes between employers, insurance carriers and the Fund. The Board noted the ALJ's ruling regarding responsibility for medical expenses was contradictory and could not be the law of the case. The Board wrote, "It is difficult to reconcile a carrier being solely responsible to pay benefits during its coverage, yet absolve that exposure by sloughing it off to the Fund." *Travelers*, 2019 WL 2412871, at *12. The Board admitted affirming the ALJ's prior ruling regarding medical expenses was improvident.

The Board voiced concerns with the Court of Appeals' ruling. Under strict construction, K.S.A. 44-556(e) specifically instructs the Director to determine the amount of reimbursement, as had been found in prior appellate rulings. The Court of Appeals, however, indicated an ALJ or the Board should do so.

This case is pending before the Kansas Court of Appeals for a second time. Oral argument occurred September 14, 2020. How it will be decided is important because litigants have interpreted their first decision as requiring the Fund to be brought into all cases in which it might possibly have to pay benefits. That is not the way the law has been applied before. See *Wasson v. United Dominion Industries*, 266 Kan. 1012, 974 P.d 578 (1999). Bringing the Fund into every possible case of exposure could greatly diminish the Fund's "fund" based on litigation costs to defend the Fund. Moving forward, it will be of interest to see the how the Kansas Court of Appeals responds to concerns raised in the Board's decision.

Sometimes, a crucial fact is missed on appeal. In *Castaneda v. ALG Transp. Servs., Inc.*, No. 118,182, 2018 WL 3320932, at *1, the Court of Appeals stated:

"Castaneda appeals the Board's decision and argues that the Board lacked authority to set aside the TTD award because the respondent had failed to contest that award before the ALJ. We agree with Castaneda's claim, reverse the Board's decision to set aside the TTD award, and remand with directions to reinstate the TTD award."

However, the respondent in *Castaneda* presented the following argument in a submission letter to the ALJ:

"Further, the record supporting the Preliminary Order lacks any medical records, reports, written work restrictions, or even references to any doctor giving Claimant time off work or work restrictions. Under cross-examination at Regular Hearing, Claimant testified that no doctor had given the Claimant time off of work since March 30, 2015. (Transcript of Regular Hearing p. 18 ln. 25 to p. 19 ln. 5) Counsel for Claimant attempted to assert that Dr. Carabetta had (Id. at p. 18 ln.17-21, p. 19 ln. 3), but in fact this is not the case. Dr. Carabetta's October 6, 2015 evaluation imposes no work restrictions and does not take Claimant off of work. (Independent Medical Evaluation Report, October 6, 2015, p. 3). At Deposition, Dr. Carabetta confirmed that, at the time of his evaluation, Claimant probably would have been capable of gainful employment, Claimant was not taken off work, and Dr. Carabetta did not impose any restrictions (albeit due, in part, to the Court not asking Dr. Carabetta to impose restrictions). (Deposition of Dr. Carabetta, p. 14 ln. 18 to p. 16 ln. 20) As there is no factual basis in the record before the Court that supports the award of temporary total disability benefits, the corresponding amount per statute should now be subtracted out of the amount of compensation due.

This obvious written argument against TTD was made to the ALJ in advance of a final ruling, and in the appeal record. For whatever reason, the Court of Appeals missed it.

With preexisting restrictions, the Court of Appeals has given us mixed messages. *Jones v. U.S.D. No. 259*, 55 Kan. App. 2d 567, 576, 419 P.3d 62 (2018), states:

"The first clause of that last sentence clearly creates a condition precedent. 'If the employee has preexisting permanent restrictions ...' then certain results follow. This is a classic 'If ... Then' sentence construction. In the event of certain conditions, then certain legal results follow.

But Jones did not have any preexisting permanent restrictions. The evidence clearly reveals that after the 2011 injury he was released to work by the doctors and he worked without any restrictions for over a year. This statute does not apply to Jones' case."

Jones says a prior decision, *Eder v. Hendrick Toyota*, No. 114,824, 2016 WL 7324454 (Kansas Court of Appeals unpublished opinion filed Dec. 16, 2016), was both factually and legally distinguishable.

In *Eder*, the worker had a June 22, 2011 work injury involving his neck, followed by an August 9, 2011 surgery. Two doctors indicated he did not need restrictions. Eder returned to work and sustained a second neck injury on March 5, 2012, as well as having a second neck surgery by Dr. Bailey on July 26, 2012, again without restrictions.

The first time Eder had permanent work restrictions was when he was evaluated by his medical expert following an April 1, 2013 evaluation. Also, a court-ordered independent medical examiner issued permanent restrictions, including for the 2011 injury.

The Board attributed all of Eder's task loss based on the March 2012 injury, but the Court of Appeals found this to be error and not based on substantial evidence. The Court of Appeals cited K.S.A. 2012 Supp. 44-510e(a)(2)(D) and concluded:

"[T]he Board should have excluded any preexisting permanent restrictions from the 56% task loss. See K.S.A. 2012 Supp. 44-510e(a)(2)(D). In its reasoning on its task loss finding, the Board noted Dr. Pratt would have given Eder restrictions after his first injury. The Board, however, assigned the entire 56% task loss to Eder's March 2012 injury without excluding these prior restrictions. Since the Board noted Eder had preexisting restrictions, it should have excluded those restrictions from the task loss for Eder's second injury. Based on these errors in determining Eder's task loss, we remand this issue to the Board for reconsideration."

The appellate court specifically directed the Board to exclude from the task loss for the March 2012 injury, any tasks claimant had been deemed to have lost the ability to perform due to the June 2011 injury. No permanent work restrictions had been issued for the June 2011 injury until analysis by hired or court-ordered medical examiners years after Eder was told by two doctors he did not need work restrictions after his first injury. So, Eder did not have restrictions at the time of his second accident, much like Jones, but the Court said the Board should have accounted for preexisting restrictions that should have been in place, but were not. In *Jones*, the Court told the Board not to consider hypothetical or "after-the-fact" restrictions which should have existed.

Both *Eder* and *Jones* involve injured workers who were not given permanent work restrictions by treating doctors. In both cases, permanent restrictions were only later retroactively created by subsequent medical evidence. In *Eder*, the Court found such restrictions credible and instructed the Board to account for task loss that would have been eliminated in the second injury due to restrictions created by the first injury. In *Jones*, the Court did just the opposite. *Eder* says permanent restrictions can be retroactively applied, while *Jones* does not.

As an aside, *Eder* was decided by the Court of Appeals roughly seven months after the parties settled the case on May 9, 2016. The Court of Appeals was never advised the case had settled and ended up writing a 28-page memorandum decision. Similarly, the Board issued one decision in 2017 the day after parties settled a case. The parties never informed the Board about the settlement. Please let us know if a case has settled. We are not told by SALJs in real time that cases have settled.

Further, in *Gilkey v. Frederick*, 55 Kan. App. 2d 487, 492-96, 419 P.3d 49 (2018), a panel rejected the Board's task loss reduction where an injured worker worked without restrictions for 12 years before his new injury. In the *Gilkey* panel's opinion, theoretical work restrictions could not be considered to be preexisting permanent restrictions as required by the statute. Note: the restrictions were not “theoretical” – they were issued by a doctor in a prior case and reaffirmed by the same doctor in the newer litigation. *Gilkey* basically holds a worker who never worked under prior permanent restrictions does not have preexisting task loss.

After many years of telling the Division of Workers Compensation to stay out of insurance coverage disputes, the Court of Appeals concluded differently in *Lamb v. Southwest Commodities, LLC*, 2017 WL 383408 (Kansas Court of Appeals unpublished opinion filed Jan. 27, 2017).

Finally, simply based on temporal proximity, the following two cases are of minor interest. *Rogers v. ALT-A & M JV LLC*, 52 Kan. App. 2d 213, 220, 364 P.3d 1206 (2015), states: "Attorney fees are allowed on appeal if the district court could award attorney fees. Workers compensation cases are not heard by the district court. As a result, the district court cannot award attorney fees in workers compensation cases and appellate courts may not award attorney fees for services on appeal."

Just one week earlier, a different panel ruled: "While this case does not arise from a district court, it does arise from an agency that routinely awards attorney fees—the workers compensation division. The spirit of Rule 7.07(b)(1) appears to be that if the lower tribunal can award fees, then an appellate court, being the proper authority to determine the reasonableness of appellate fees, can, as an exercise of discretion, award attorney fees for attorney services on appeal. *Karr v. Mid Cent. Contractors*, No. 113,744, 2015 WL 8591327, at *6 (Kansas Court of Appeals unpublished opinion filed Dec. 11, 2015).

At least *Rogers* is published, as well as *Jones*.

Ensuring a Sufficient Record for the Board

- K.S.A. 44-555c (a) states in part: “The review by the appeals board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.”

- “The standard of review for the Board in workers compensation cases is the same as conferred under prior law upon the district court. The standard was stated in *Miner v. M. Bruenger & Co.* 17 Kan. App. 2d 185, 188, 836 P.2d, 19 (1992)

Ensuring a Sufficient Record for the Board Con't

- The standard of review in workers compensation cases is well settled. Kansas case law allows the district court a trial de novo on the record and, although the court is bound by the agency record, the district court has jurisdiction and the duty to make an independent adjudication of the facts and the law.

- This de novo review standard does not allow the Board to seek or consider new evidence on appeal.

- The Board cannot consider anything not put into the record by stipulations, orders, testimony or exhibits properly introduced and admitted.

Ensuring a Sufficient Record for the Board Con't

- The Board is bound by whatever record is made before the administrative law judge.

- The Board is not allowed to consider the whole or even portions of the editions of the *American Medical Association Guides to the Evaluation of Permanent Impairment* without them being entered into the record by stipulation or as exhibit

Ensuring a Sufficient Record for the Board Con't

- In a recent unpublished opinion of the Kansas Court of Appeals, *Willoughby v,.Goodyear Tire and Rubber Co.* 391 P. 3d 711, No, 115,898 (2017), the Kansas Court of Appeals took the Board to task for using *The Guides* to combine impairment ratings for a preexisting condition. The Court of Appeals criticized the Board for "taking judicial or administrative notice sua sponte of the Guidelines." The Kansas Court of Appeals went on to say:

- It [the Board] failed to follow proper procedures for admission of evidence and to follow proper procedures for admission of evidence and taking judicial notice of evidence. The Board based it decision upon information not part of the record.

- Practice Tip: IF YOU WANT THE BOARD TO CONSIDER *THE GUIDES* OR PORTIONS OF *THE GUIDES* GET THEM INTO THE RECORD BEFORE YOU GET TO THE BOARD.

APPEALS BOARD PROCEDURE

- 1.Initiating review proceedings before the Appeals Board

- All final orders, awards, modifications of awards or preliminary awards under K.S.A. 44-534a, made by an administrative law judge shall be subject to review by the Appeals Board upon written request of any interested party within ten business days. K.S.A. 44-551(l)(1).

- Applications for review should specify the issues to be considered and the jurisdictional basis for the appeal from a preliminary hearing. K.A.R. 51-18-3.

APPEALS BOARD PROCEDURE Con't

- The Appeals Board's review authority of preliminary orders is limited to disputed issues of whether the employee suffered an accident, repetitive trauma or resulting injury; whether the injury arose out of and in the course of employment; whether notice was given or whether certain defenses pertaining to compensability apply. *See* K.S.A. 44-534a(a)(2); *see also Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 675, 994 P.2d 641 (1999).

- In the case of final orders, awards and modifications of awards, the Appeals Board conducts unlimited, *de novo* review. *See Helms v. Pendergast*, 21 Kan. App. 2d 303, 308-09, 899 P.2d 501 (1995).

APPEALS BOARD PROCEDURE Con't

- 2.After the application for review is filed, a briefing schedule is established and an oral argument date is set, when applicable.

- The appellant's brief shall be submitted within 30 days from the date of the filing of the application for review, the appellee's brief shall be submitted within 20 days thereafter, and a reply brief limited to new issues raised by appellee may be filed within 10 days thereafter. K.A.R. 51-18-4(a).

- There is no mandatory brief format, and briefs may be prepared in letter form. The Board also accepts submission letters in lieu of briefs. If a party does not intend to file a brief, please advise the Board by letter.

APPEALS BOARD PROCEDURE Con't

- The Board maintains a summary calendar. If a review involves no new questions or law and if oral argument is not necessary for a fair hearing, the Board may set a case on the summary calendar. Once on the summary calendar, the case shall be deemed submitted without oral argument unless a motion for oral argument is filed by one of the parties within 10 days after notice of calendaring has been sent. A motion for oral argument shall set forth the reasons why oral argument would be helpful to the Board. K.S.A. 51-18-4(b).

- Reviews of preliminary hearings do not have oral argument settings. Review of a preliminary hearing is conducted by a panel of one member, but all Board members have input. K.S.A. 44-555c(j). The case is deemed submitted after the parties' briefs have been filed.

- Requests for extensions may be granted, as provided in K.A.R. 51-18-5.

APPEALS BOARD PROCEDURE Con't

- 3.Oral arguments

- For purposes of hearing cases, the Board may sit together in panels of two members or more. K.S.A. 44-555c(j). All members of the Board shall review each matter, and all decisions, reviews and determinations by the Board shall be approved in writing by at least three Board members. *Id*. The Board has infrequently conducted hearings before all five Board members. Typically, oral argument is limited to approximately 50 minutes, with the appealing party making initial arguments, the opposing party responding, and the appealing party is given the opportunity for rebuttal. If your case is particularly complex in nature or involves numerous litigants, please let us know so we may plan accordingly.

- The Appeals Board may conduct a short pre-argument conference to confirm the issues on review, the contents of the record and other stipulations.

APPEALS BOARD PROCEDURE Con't

- Due to the current public health emergency, oral arguments are being held via video conferencing. The Appeals Board currently uses Skype for Business as its video conferencing platform. Counsel are notified via email of the video conference approximately one week before the scheduled oral argument date.

- The Appeals Board expects counsel to be prepared to conduct oral argument via Skype for Business, unless alternative arrangements are made at least 48 hours before oral argument, absent extenuating circumstances. Of note, we will likely have access to Zoom soon.

APPEALS BOARD PROCEDURE Con't

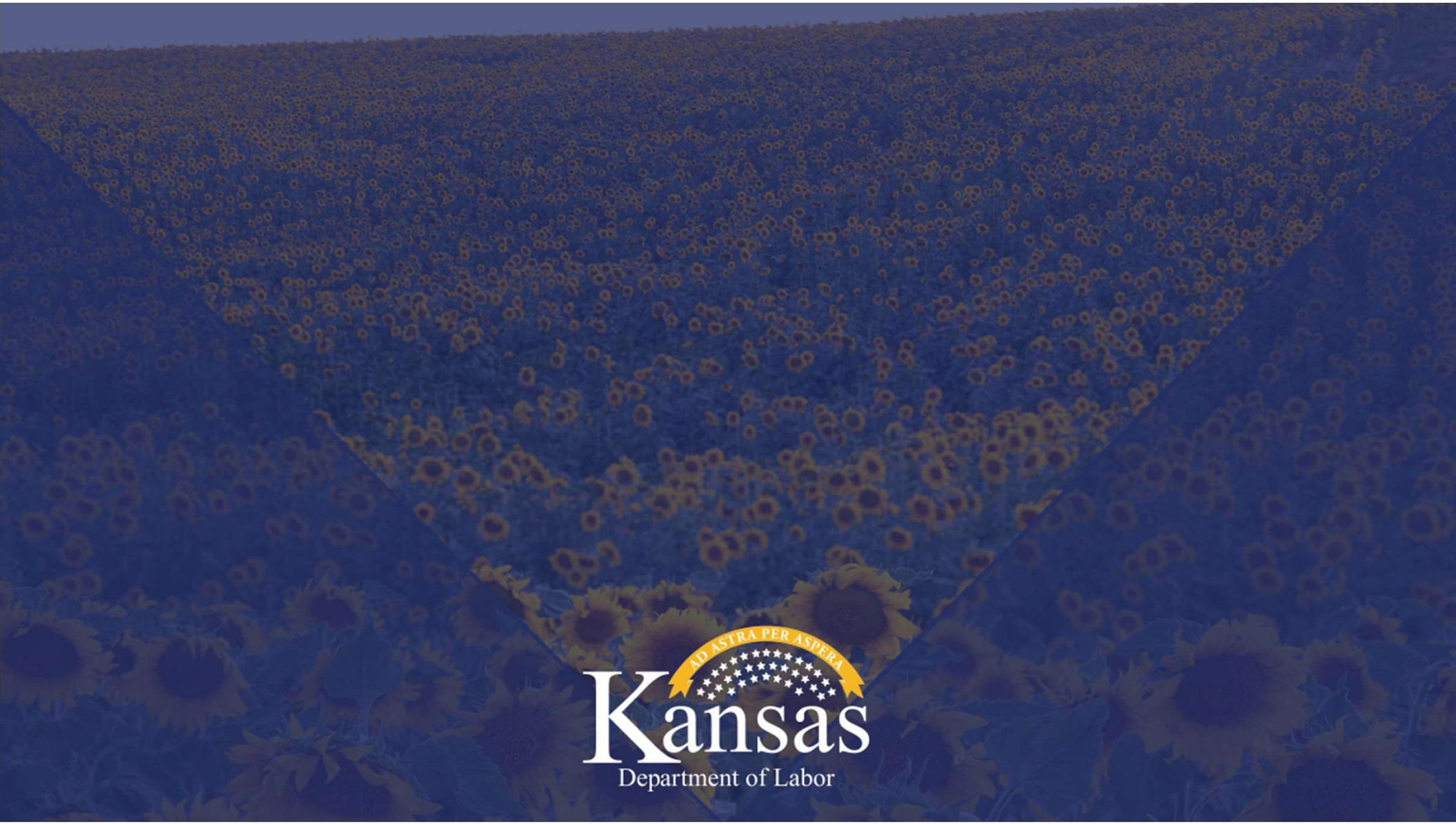
- 4.Post-argument matters

- The Appeals Board must issue orders within 30 days from the date arguments were presented by the parties. K.S.A. 44-551(l).

- Parties seeking an indefinite continuance of their case pending a decision from the Supreme Court in *Johnson v. U.S. Foods* must jointly request the continuance in writing prior to oral argument. Once the case has been argued, K.S.A. 44-551(l) mandates a decision shall be issued within 30 days, without exception.

APPEALS BOARD PROCEDURE Con't

- If a settlement is reached before a case is decided by the Board, the appellant shall promptly notify the Appeals Board of the settlement. K.A.R. 51-18-6.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